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EXAMINER

MADSEN, ROBERT A

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1761

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9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/839,715	Applicant(s) RENINI ET AL.	
	Examiner Robert Madsen	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-68 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-9, 14-17, 49, 51, 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Katz et al. (US 3851574).

Regarding claims 1-3, 8, 9, 16, 49, 51, and 68, Katz et al. teach a microwave container (having a top, bottom and opening, as recited in claims 51 and 68) which does not contain metal (i.e. does not have a microwave susceptor as recited in claim 16) and unpopped popcorn kernels, that are added with a sugar based coating material (Column 1, line 58 to column 2, line 7 Column 2, line 43-57, Figures) wherein the sugar may either be dispersed in oil or is added as a dry mix (not homogeneously mixed as recited in claims 2, 51 and 68) comprising oil encapsulated water drops and sugar solids, which would include sugar pellets of at least 15% sugar as recited in claims 1, 49, 51, and 68 and would thus not contain emulsifiers as recited in claims 3 and 68 or moisture as recited in claims 8 and 9 (Column 5, lines 23-30).

Regarding claims 6, 7, and 17, Katz et al. teach between 15-65% kernels and 1 to 70% sugar pellets (Examples, Column 4, lines 3-9).

Regarding claims 14 and 15, Katz et al. teach up to 10% salt (Examples).

Regarding claim 16, Katz et al. teach the bag does not contain metal, which would include microwave susceptors (Column 2, lines 43-55).

Claims 51, 54-56, 58, 60, 61, 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by LaBaw et al. (US 4904488).

Regarding claims 51, LaBaw et al. teach a microwave bag having a top, bottom and opening (Figures, Column 3, line 48 to Column 4, line 3), introducing kernels, sugar pellets (i.e. the flavored dry mix comprising sugars) and oil, non-homogeneously (Column 4, lines 12-15, Example 1).

Regarding claims 54-56 and 58, the susceptor runs a portion of the length (See figure 5, Column 3, lines 52-68) as recited in claim 54, or at least 90% portion of the bottom as recited in claims 55, 56, and 58 in the embodiment as most clearly shown in Figure 11, where the bottom is taken to be the portion of the bag that touches the microwave floor, (Column 9 line 55 to Column 10, line 7, Figures 10 and 11).

Regarding claims 60 and 61, LaBaw teaches three equal portions with the kernels/pellets/oil in the middle (See Figure 5, Column 4, lines 12-50)

Claims 1, 2, 4-10, 12, 49-51, 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sheu (WO 00/60954).

Regarding claims 1, 2, 6, 10, 12, 49-51, 68, see Page 9, lines 4-12, Page 8, 8-35, Examples, Page 6, lines 18-29, wherein the phrase "up to 4%" emulsifiers as well as 0.1% emulsifiers is considered substantially free of emulsifiers.

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Regarding claims 4-9, see Page 5 line 17 to Page 6 line 35.

Claims 1-3,6-9,12-15,18, 49,51,54, 60-65, and 68 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Glass (US 5897894).

Regarding claims 1, 49, 51, and 68 Glass teaches a microwave popcorn bag , unpopped kernels, and a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet (Abstract, Column 3, lines 51-67, Column 6, lines 50-64) .

Regarding claims 2, see Column 3, lines 51-67, Column 8, lines 50-54.

Regarding claim 3, see Column 6, lines 50-64.

Regarding claims 6-9,12-15, see Column 3, lines 41-50, Column 5, line 40 to Column 6, line 6.

Regarding claims 18, see Column 4, lines 15-67, Column 7, line 15 to column 8, line 33.

Regarding claims 54 and 60, see Column 4, lines 48-53, Column 7, lines 48-55.

Regarding claims 61-63,see Column 7, lines 23-28, Column 8, lines 34-50 (i.e. oil and kernels are filled first and are located closer to one end than the pellets) , and Column 8, lines 21-33, respectively.

Regarding claims 64 and 65, see example ,Column 3, lines 51-67, Column 6, lines 50-64.

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Claims 51,54,55,56,58 are rejected under 35 U.S.C. 102(b) as being anticipated by Jensen et al. (US 5443858) as evident by Watkins et al. (US 5044777)

Regarding claim 51, See column 7, lines 40-67, Column 9, lines 43-57.

Regarding claims 54,55,56,58, Jensen et al. teach using a microwave bag as taught by Watkins '777. Thus, as evident by Watkins '777, Jensen al. inherently teach the susceptor features of 54,55,56,58 (See Watkins Column 3, line 37 to Column 4, line 2, Column 5, lines 16-20, Figures 1, 5, and 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) as applied to claims 1,2,4-10,12,49-51,68 above, further in view of Smith (US 3556811).

Sheu teaches heating the sugar mix to 110-170°C to form a hard candy base, or sugar-based pellet, but is silent in teaching mixing under vacuum. However, Smith, who also teaches preparing a hard candy base that may be used for coating popcorn, is relied on as evidence of the conventionality of using a vacuum cooker for heating a hard candy base. Smith teaches new hard candy base formulations that are prepared using

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conventional candy equipment, which includes vacuum cookers (Column 5, lines 11-31, Examples 1 and 2). Therefore, it would have been obvious to modify Sheu and apply vacuum during the heating step for preparing the sugar pellet since this was a well known conventional step in preparing a conventional hard candy base for coating popcorn and one would have been substituting one type heating step for another for the same purpose

Claims 57 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488), as applied to claims 51, 54-56, 58, 60, 61, 68 above further in view of Katz et al. (US 3851574).

Regarding claims 57 and 59, as discussed above in the rejection of claims 56, LaBaw et al. teach the susceptor covers at least 90% portion of the bottom (Column 9 line 55 to Column 10, line 7, Figures 10 and 11), and LaBaw et al. teach kernel ranges of 40-95% and 25-55%, oil ranges of 10-45% and 30-50%, with flavoring compositions, excluding oil, at 1-10%, which comprise sugar pellets (Column 5, lines 1-20, Example). Although LaBaw et al. teach other known compositions for microwave popcorn include those taught by Katz et al (Column 2, lines 45-55), LaBaw et al. are silent in teaching the sugar pellets are 1-10% or 15-25%.

Katz et al. teach conventional microwave popcorn-flavoring compositions comprising sugar pellets (Column 1, line 58 to column 2, line 7 Column 2, line 43-57, Figures) wherein the sugar is 6-48% of the total ingredients, including oil and kernels (Examples). Therefore, it would have been obvious to include sugar pellets at 1-10% or

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15-25% since this it was well known to add this range of sugar pellets to a microwave popcorn flavor composition and one would have been substituting one flavor composition for another for the same purpose.

Claims 52, 53, 62, and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488), as applied to claims 51, 54-56, 58, 60, 61, 68 above further in view of Glass (US 5897894).

Regarding claims 52 and 53, LaBaw et al. teach adding sugar pellets, oil and kernels, but are silent in adding sugar pellets before the kernels as recited in claim 52 first or before the oil as recited in claim 53. Glass is relied on as evidence of the conventionality of separately adding each ingredient to the bag (Figure 2). Glass does this in order to gain the benefit of providing a homogeneous distribution of ingredients from bag to bag, yet maintaining a heterogeneous distribution of ingredients within each bag in order to give a more "at-home stove top"-type of distribution (Figure 2, Column 3, lines 4-15, Column 8, lines 60-67). Therefore, to select any particular order of adding the ingredients would have been obvious, absent a showing of unexpected results, since Glass teaches the important issues are (1) ingredients are added separately to maintain a homogeneous distribution from bag to bag and (2) a heterogeneous distribution within each bag is desired, and adding ingredients in any different order would not deviate from these distribution requirements.

Regarding claims 62, LaBaw et al. teach the sugar pellets in the middle region, but are silent in teaching filling the bag such at the oil and kernels are closer to one end

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that the sugar pellets. However, Glass, who also teaches microwave flavored popcorn bags wherein the sugar pellets are in the middle region, is relied on as evidence of the conventionality of filling the bags such that the oil and kernels are filled first and are located closer to one end than the pellets (Column 8, lines 21-50). Therefore, it would have been to fill the bag of LaBaw et al such that the majority of the sugar pellets in the middle region closer to either the top or bottom region than the oil and kernels since this was a conventional way to fill microwave popcorn bags having sugar pellets:

Regarding claim 66, as shown in Figure 4, LaBaw et al. illustrates the microwave susceptor is less than the 90% of the middle region.

Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over LaBaw et al. (US 4904488) in view of Glass (US 5897894) as applied to claims 62 and 66 above, further in Katz et al. (US 3851574).

Regarding claim 67, LaBaw et al. teach 25-55% kernels, 30-50% oil, and flavoring compositions, excluding oil, at 1-10%, which comprise sugar pellets (Column 5, lines 1-20, Example). Although LaBaw et al. teach other known compositions for microwave popcorn include those taught by Katz et al (Column 2, lines 45-55), LaBaw et al. are silent in teaching the sugar pellets are 1-10% or 15-25%.

Katz et al. teach conventional microwave popcorn-flavoring compositions comprising sugar pellets (Column 1, line 58 to column 2, line 7 Column 2, line 43-57, Figures) wherein the sugar is 6-48% of the total ingredients, including oil and kernels (Examples). Therefore, it would have been obvious to include sugar pellets 15-25%

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since this it was well known to add this range of sugar pellets to a microwave popcorn flavor composition and one would have been substituting one flavor composition for another for the same purpose.

Claims 19-34,38,39, 41-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glass (US 5897894) as applied to claims 1-3,6-9,12-15,18, and 49 above, further in view of LaBaw et al. (US 4904488) and Watkins et al. (US 5044777).

Regarding claim 19, although Glass teaches the microwave susceptor is in the middle section of a bag divided into thirds and that the bag is cooked in a conventional microwave manner (Column 4, lines 15-67, Column 7, line 15 to column 8, line 67), but is silent in teaching that the microwave susceptor is placed on the bottom surface.

However, LaBaw et al. are relied on as evidence of a microwave popcorn bag with the susceptor on the bottom surface, for either a three-part bag or up-right bag, in order to minimize the number of popped kernels (See items 30 and 130 in Figures 4,5,10,11, Column 9, lines 15-26). Watkins et al. are relied on as further evidence of a three-part microwave popcorn bag with the susceptor on the bottom surface, or lower face panel (Figure 1, item 56). Therefore it would have been obvious to insert the susceptor on the bottom surface, since it would minimize the number of popped kernels and one would be substituting one conventional popcorn bag design for another for the same purpose.

Regarding claims 20, 21, Glass teaches the susceptor should be on only one face of the bag and that the susceptor area should be smaller than the non-susceptor area (Column 4, lines 29-60, Column 8, lines 21-33), but Glass is silent in teaching

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greater than 40 or 50% of the length. However, LaBaw et al., who also teach a three-part popcorn bag wherein the susceptor area is smaller than the non-susceptor area, are relied on as evidence of the susceptor placement being greater than 40% of the bag length (Figure 2 and 5). Watkins et al. are relied on as further evidence of greater than 40 or 50% of the length (Figures).

Therefore, it would have been obvious to provide a susceptor of greater than 40% or greater than 50% of the length of the bag since one would have been substituting one known popcorn bag design for another for the same purpose.

Regarding claims 22-29, Glass teaches 60-97% unpopped kernels, 2-40% oil, and 1-4% of a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet (Abstract, Column 3, lines 41-67, Column 5, line 20 to Column 6, line 6, Column 6, lines 50-64).

Regarding claim 30, Glass is silent in teaching the susceptor is greater than 90% of the width. However, LaBaw teach the width to length ratio of the susceptor should be 1:1.0 to 1:1.4 (Column 7, lines 40-44) et al. are relied on as evidence of the conventional susceptor being greater than 90% of the width (See

Regarding claims 31-33, Glass teaches the susceptor area should be smaller than the non-susceptor area (column 8, lines 21-34), but is silent teaching it should be 25-50% the length of the bag as recited in claim 31, 30-40% the length as recited in claim 32, or that the width is 75-85% the width of the bag as recited in claim 33. LaBaw et al. also teach a three part popcorn bag wherein the susceptor is less than the entire length of the bag, and greater than 33%. LaBaw et al. further teach the number of

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unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the portion of the bag in touch with the microwave base) is covered by susceptor (See items 30 and 130 in Figures 4,5,10,11, Column 9, lines 15-26). Therefore, it would have been obvious to select a length between 25 and 50% of the bag since LaBaw et al. clearly show in the Figures greater than around 33%.

Further, to select any particular length susceptor relative to the length of the bag would have been an obvious result effective variable of the particular length of the bottom surface relative the length of the bag since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the length of the susceptor relative to the length of the bottom surface. Furthermore, to select any particular width of susceptor relative to the width of the bag would have been an obvious result effective of the number of unpopped kernels allowed since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the width of the susceptor relative to the width of the bottom surface.

Regarding claims 34,38,39, Glass teaches 60-97% unpopped kernels, 2-40% oil, and 1-4% of a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet (Abstract, Column 3, lines 41-67, Column 5, line 20 to Column 6, line 6, Column 6, lines 50-64).

Regarding claims 41-44, Glass teaches three equal portions with the kernels as recited in claim 41 (Column 4, lines 48-53, Column 7, lines 48-55), with the ingredients contained within the middle as recited in claim 42 (Column 7, lines 23-28), the oil and kernels are filled first and are located closer to one end than the pellets as recited in

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claim 43(Column 8, lines 34-50), and the susceptor covers substantially the entire length of the middle (Column 8, lines 21-33).

Regarding claims 45 and 46, Glass teaches 60-97% unpopped kernels, 2-40% oil, and 1-4% of a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet (Abstract, Column 3, lines 41-67, Column 5, line 20 to Column 6, line 6, Column 6, lines 50-64).

Regarding claim 47, Glass teaches the susceptor should be on only one face of the bag, the susceptor area should be smaller than the non-susceptor area, and the susceptor area should be limited to where the kernel, popcorn, fat, and pellets are charged, which is a middle section. Glass further teaches that since the susceptor material is expensive, it is beneficial to use the minimal size required (Column 4, lines 29-60, Column 7, lines 48-55, Column 8, lines 21-33). Although, Glass is silent in teaching the susceptor is less than 90% of length of the middle section per se, modifying the susceptor to less than 90% of the length of the middle section would have been an obvious result effective variable of the minimal size required for popping the kernels since Glass teaches (1) placing the susceptor in the middle section and (2) minimizing the size of the susceptor to save on costs yet provide a sufficient heating surface and a sufficient volume for popping.

Claims 35-37, 40, and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glass (US 5897894) view of LaBaw et al. (US 4904488) and Watkins

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et al. (US 5044777) as applied to claims 19-34,38,39, 41-47above, further in view of Grunewald-Kirstein (US 3843814).

Regarding claims 35-37,40, and 48, Glass teaches 60-97% unpopped kernels, 2-40% oil as recited in claim 40, and 1-4% of a salt pellet, which may either be partly or completely replaced by sugar or an additional sugar pellet may be added along with the salt pellet(Abstract, Column 3, lines 41-67, Column 5, line 20 to Column 6, line 6,Column 6, lines 50-64). Although Glass teaches the pellet is added for flavoring the popcorn, Glass is silent in teaching other recipes such as 25-55 % kernels as recited in claims 35,40, and 48, 5-35% pellets, as recited in claim 36, or 15-25% pellets as recited in claims 37 ,40, and 48.

Grunewald-Kirstein is relied on as evidence of making sugar coating popcorn with 23-33% kernels and 44%-51% sugar while using oil within the same range as Glass(Example 1). Furthermore Grunewald Kirstein teaches the sugar content is added at the same level as the oil, and in this case sugar is a liquid component that makes up 50% of the liquid ingredient (Column 2, lines 12-53). Grunewald Kirstein teaches adding this level of sugar to provide a substantially continuous sweet layer around the popped kernels. Therefore, to increase the level of sugar pellets to anywhere from 5% to 35% as recited in claims 36,37, 40,and 48, and reduce the level of kernels to 25-55% as recited in claims 35,40, and 48 would have been an obvious result effective variable of the degree of sugar coating one desired on the popcorn since it was known that by increasing the sugar content and decreasing the number of kernels one would obtain a continuous coating layer of sugar around each piece of popcorn.

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Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Moseley et al. (US 6137098) teach a microwave popcorn bag susceptor that occupies 100% the length of the bag, but does not occupy the entire width.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.


MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

Robert Madsen 
Examiner
Art Unit 1761
August 5, 2002